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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,127	03/03/2006	Bodo W Lambertz	DD-25023	8579
2387 7590 02/25/2009 Olson & Cepuritis, LTD. 20 NORTH WACKER DRIVE 36TH FLOOR CHICAGO, IL 60606				
EXAMINER				
HOEY, ALISSA L				
ART UNIT		PAPER NUMBER		
3765				
MAIL DATE		DELIVERY MODE		
02/25/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/544,127

**Applicant(s)**

LAMBERTZ, BODO W

**Examiner**

Alissa L. Hoey

**Art Unit**

3765

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4-14, 17 and 19-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-14, 17 and 19-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/04/08 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Scholl (US 1,741,340).

Scholl teaches the following:

21. (New) A sock for use in sports activities comprising a foot part and a shaft extending therefrom (figure 1), the foot part having a toe portion, a heel portion, and a stepping portion between the heel portion and the toe portion (see figures 1, 2 and 3), the stepping portion including an arch (8, 9, 6) that is directed outward and is turned against the inward arch of the user (see figures 1-4, identifiers 9), the arch providing a rounded external contour and being constructed and arranged to support the rolling

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motion of the foot during walking or running (figures 1-4).

22. (New) A sock as in Claim 21, wherein the arch is formed from padding affixed to the stepping portion (figures 1-4).

23. (New) A sock as in Claim 22, wherein the padding can be of different thicknesses (figures 3 and 4, identifier 9).

24. (New) A sock as in Claim 23, wherein the padding is thicker in the central portion of the arch and is tapered at the ends adjacent the heel portion and the toe portion, respectively, to continue the rounded external contour of the sock (figure 4, identifier 9).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-14, 17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scholl in view of Lambertz (US 6,286,151).

Scholl teaches a sock garment with a pad in the arch area of the foot for support. However, Scholl fails to teach a climate channel, an air channel or a bandage in the sock structure.

In regard to claim 4, Lambertz teaches a sock according to Claim 1, characterized in that at least one climate channel (lower portion of 3) is provided in the stepping area (figure 1).

In regard to claim 5, Lambertz teaches a sock according to Claim 4, characterized in that the air channels (upper portion of 3) are provided on the inner side of the leg and/or on the outer side of the leg of the sock (figure 1).

In regard to claim 6, Lambertz teaches a sock according to Claim 5, characterized in that the air channels are connected with at least one climate channel in the stepping area (see figures (see figure 1).

In regard to claim 7, Lambertz teaches a sock according to Claim 6, characterized in that the climate channels (3) in the stepping area present an arc-shaped pattern (see arc of identifier 3 in figure 1).

In regard to claim 8, Lambertz teaches a sock according to Claim 7, characterized in that the climate channels (3) present partial narrowings (see figure 1).

In regard to claim 9, Lambertz teaches a sock according to Claim 8, characterized in that the climate channels (3) present a substantially circular cross section.

In regard to claim 10, Lambertz teaches a Sock according to Claim 9, characterized in that the climate channels (3) are interconnected by a central channel (see figure 8, identifiers 12 and 13).

In regard to claim 11, Lambertz teaches a sock according to Claim 10, characterized in that air channels (25) and the climate channels (26) are made of the same material.

In regard to claim 12, Lambertz teaches a sock according to Claim 11, characterized in that the air channel (3) consists of a climate regulating cross knitted

fabric (column 1, lines 26-33).

In regard to claim 13, Lambertz teaches a sock according to Claim 12, characterized in that the climate channel (3) consists of a climate regulating cross knitted fabric (column 3, lines 32-45).

In regard to claim 14, Lambertz teaches a sock according to Claim 13, characterized in that sock is fitted with an X-Cross bandage (figure 1, identifier 9).

In regard to claim 17, Lambertz teaches a sock according to Claim 2, characterized in that the air channels (3) are provided on the inner side of the leg and/or on the outer side of the leg of the sock.

In regard to claim 19, Lambertz teaches a sock according to Claim 4, characterized in that at least one climate channel (3) is provided in the stepping area (figures 1 and 8).

In regard to claim 20, Lambertz teaches a sock according to Claim 19, characterized in that the air channels (3) are connected with at least one climate channel in the stepping area (figures 1 and 8).

It would have been obvious to have provided the sock and pad of Scholl with the air channel, climate channel and bandage support of Lambertz, since the sock of Scholl provided with climate channel and air channel would provide a sock with greater support and breathability.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and can be found cited in PTO-892 form submitted herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ALH

/Alissa L. Hoey/  
Primary Examiner, Art Unit 3765

